

any time it appears there are no triable issues of fact and the application for payment from the fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person or persons having knowledge of the facts and may be made on the basis that the application or the judgment referred to therein do not form a basis for meritorious recovery within the purview of G.S. 93A-17, that the applicant has not complied with the provisions of this Article, or that the liability of the fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of ~~such~~the motion shall be given at least 10 days prior to the time fixed for hearing. If the applicant or judgment debtor fails to appear at the hearing after receiving notice of the hearing, the applicant or judgment debtor ~~shall waive his or her rights~~waives the person's rights unless the absence is excused by the Commission.

(b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving ~~his~~the cause of action for conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the conversion of trust funds. This presumption is a presumption affecting the burden of producing evidence."

SECTION 23.(f) G.S. 93A-22 reads as rewritten:

"§ 93A-22. *Repayment to fund; automatic suspension of license.*

Should the Commission pay from the Real Estate Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the effective date of the order authorizing payment from the fund. No such broker or salesperson shall be granted a reinstatement until ~~he has the fund has been~~repaid in full, plus including interest at the legal rate as provided for in ~~G.S. 24-1, the amount paid from the Real Estate Recovery Fund.~~G.S. 24-1."

SECTION 23.(g) G.S. 93A-23 reads as rewritten:

"§ 93A-23. *Subrogation of rights.*

When the Commission has paid from the Real Estate Recovery Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor shall assign all ~~his~~ right, title, and interest in the judgment to the extent of the amount so paid to the Commission and any amount and interest so recovered by the Commission on the judgment shall be deposited in the Real Estate Recovery Fund."

SECTION 23.(h) G.S. 93A-25 reads as rewritten: